

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION :
CORPORATION, :

Plaintiff, :

v. :

BERNARD L. MADOFF INVESTMENT :
SECURITIES LLC, :

Defendant. :
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In re: :

BERNARD L. MADOFF, :

Debtor. :
-----X

IRVING H. PICARD, Trustee for the :
Liquidation of Bernard L. Madoff Investment :
Securities LLC, :

Plaintiff, :

v. :

BNP PARIBAS S.A., *et al.* :

Defendants. :
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Adv. Proc. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Proc. No. 12-01576 (SMB)

ORDER TO SHOW CAUSE

Pursuant to the Court's *Memorandum Decision Granting in Part and Denying in Part Defendants' Motions to Dismiss*, dated Aug. 12, 2014 and the *Order Granting in Part and Denying in Part Defendants' Motions to Dismiss the Third Amended Complaint*, dated Dec. 10, 2014, entered in *Picard v. Merkin*, Adv. Pro. No. 09-01182 (SMB) ("*Merkin Case*") (and respectively, ECF Doc. ## 212 and 251 in the *Merkin Case*),

the Court dismissed all initial fraudulent transfer claims brought by the Trustee against Ascot Partners, L.P. (“Ascot”) other than the claims relating to the initial transfers aggregating \$280 million made within two years of December 11, 2008 (the “Ascot Two Year Transfers”). Following settlements with defendants Ariel Fund Ltd. and Gabriel Capital LP, the Ascot Two Year Transfers were the only initial fraudulent transfer claims remaining in the *Merkin Case*.

Thereafter, by *Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure Approving Settlement Agreement Between the Trustee and Ascot Partners, L.P., Through Its Receiver, Ralph C. Dawson, Ascot Fund Limited, J. Ezra Merkin, and Gabriel Capital Corporation*, dated July 3, 2018 (the “Ascot Settlement”), entered in the *Merkin Case* (ECF Doc. # 454), the Court approved a settlement pursuant to which Ascot and Gabriel Capital Corp. agreed to pay the BLMIS estate \$280 million, as more fully described in the settlement agreement attached as Exhibit A to the Trustee’s *Motion for Entry of Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure Approving Settlement Agreement Between the Trustee and Ascot Partners, L.P., Through Its Receiver, Ralph C. Dawson, Ascot Fund Limited, J. Ezra Merkin, and Gabriel Capital Corporation*, dated June 13, 2018 (ECF Doc. # 450). The \$280 million was to be funded from the catch-up distribution from the BLMIS estate to which Ascot became entitled under the Ascot Settlement.

The *Amended Complaint*, dated Aug. 30, 2017 in this adversary proceeding (ECF Doc. # 100) seeks to recover two subsequent transfers in the sums of \$51,471,495 and \$5,719,055, made respectively on January 4, 2008 and February 14, 2008, from Ascot to

defendant BNP Paribas Bank & Trust (Cayman) Limited (“BNPP Cayman”). In light of the Ascot Settlement which the Court presumes has been consummated, , it is hereby

ORDERED that the Plaintiff show cause at a hearing to be held before the undersigned in Room 723 of the United States Bankruptcy Court on September 26, 2018, at 10:00 a.m., why an order should not be entered pursuant to the “single satisfaction” rule, 11 U.S.C. § 550(d), dismissing the subsequent transfer claims or denying the Trustee leave to amend to assert the subsequent transfer claims from Ascot to BNPP Cayman as alleged in the *Amended Complaint*; and, it is further

ORDERED that the Plaintiff and the Defendants may each submit a memorandum not exceeding ten pages in length relating to the applicability of the single satisfaction rule to such subsequent transfer claims on or before September 14, 2018, at 5:00 p.m.

Dated: New York, New York
August 29, 2018

/s/ *Stuart M. Bernstein*
STUART M. BERNSTEIN
United States Bankruptcy Court